Supreme Court, U.S.
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(2)

No. 04-767

IN THE
SUPREME COURT OF THE UNITED STATES

RALPH DEWAYNE MOORE. IN A MATTER FOR HIS MINOR CHILD. ANGEL GAILE MOORE.

PETITIONER.

V.

STATE OF TENNESSEE. DEPARTMENT OF CHILDREN'S SERVICES.

RESPONDENTS.

ON PETITON FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF TENNESSEE AT KNOXVILLE (EASTERN DIVISION)

PETITION FOR REHEARING WRIT OF CERTIORARI

RALPH DEWAYNE MOORE
C/O PO BOX 928
HARRIMAN. TN 37748
PHONE NO. 865-882-8398
PETITIONER

QUESTIONS PRESENTED

Why would Millie Douglas. Department of Children's Services caseworker. be involved in a temporary custody case that didn't involve dependency. neglect. abuse. or risk of harm?

Why would a child be taken from her family out of the guise of questioned paternity when there are no issues of dependency. neglect. abuse. or risk of harm?

Why didn't the Department of Children's Services do a dna test before taking Angel from her family since I was listed on the birth certificate and signed a voluntary acknowledgement?

Why didn't the trial court cite the court appointed attorney Spence Bruner for contempt for his actions?

Why does the trial court think it is in the best interest of the child for my parental rights to be terminated?

Why wasn't the law of doctrine of judicial estoppel applied?

Why hasn't Linda and Rebecca Moore's custody been abolished?

Why would Angel's story be listed in the Tennessee Federal lawsuit to reform state child welfare system?

Why would Angel be adopted by a foster family when my rights are still being contested in court proceedings?

Why would The Department of Children's Services not mention that my daughter was adopted and her birth last name has been changed?

How could The Department of Children's Services adopt my daughter when all of my appeals have not exhausted in court?

PARTIES TO THE PROCEEDING

Petitioner

Petitioner is Ralph Dewayne Moore. citizen of the United States and residing in the Eastern District of Tennessee. In the matter of his minor child, Angel Gaile Moore. Petitioner was the Plaintiff in the Supreme Court of Tennessee at Knoxville (Eastern Division). PRO SE.

Intervening Petitioners in the lower courts were Linda Moore, Angel's Grandmother, and Rebecca Moore. Angel's Paternal Aunt. citizens of the United States and residing in the Eastern District of Tennessee.

Respondents

Respondents is the State of Tennessee. Department of Children's Services. individual citizens of the United States. The Respondents were the Defendants in the Supreme Court of Tennessee at Knoxville (Eastern Division). Their attorney is Dianne Stamey Dycus. Assistant Attorney General for the State of Tennessee Department of Children's Services. PO Box 20207, Nashville, TN 37202.

TABLE OF CONTENTS

QUESTIONS PRESENTED..... i-ii

PARTIES TO THE PROCEEDINGS..... iii

TABLE OF CONTENTS..... iv-v

PETITION FOR A WRIT OF CERTIORARI..... 1

ORDERS BELOW..... 1

STATEMENT OF JURISDICTION..... 1

STATEMENT OF THE CASE..... 2-6

REASONS FOR GRANTING THE
WRIT OF CERTIORARI..... 7-10

CONCLUSION..... 11

TABLE OF APPENDICES..... 12-14

APPENDIX A
TENNESSEE SUPREME COURT
DECISION MAY 17, 2004..... 15

APPENDIX B
TENNESSEE SUPREME COURT
DECISION MARCH 8, 2004..... 16

APPENDIX C
COURT OF APPEALS OF
TENNESSEE AT KNOXVILLE
JUDGMENT NOVEMBER 12, 2003.....17

APPENDIX D
COURT OF APPEALS OF
TENNESSEE AT KNOXVILLE
OPINION NOVEMBER 12. 2003.....18-22

APPENDIX E
CIRCUIT COURT OF ROANE COUNTY.
TENNESSEE JANUARY 13. 2003.....23-25

APPENDIX F
JUVENILE COURT OF ROANE COUNTY.
TENNESSEE JUNE 14. 2002.....26-32

APPENDIX G
U.S DISTRICT COURT JUDGE TODD
CAMPBELL ORDER MAY 26. 2000
COURTESY OF CHILDREN'S RIGHTS..... 33-36

APPENDIX H
EXCERPT FROM THE PATH GUIDE
REASONS FOR SURVIVAL BEHAVIORS..... 37-38

APPENDIX I
EXCERPT FROM THE PATH GUIDE KEY
DEFINITIONS..... 39-40

APPENDIX J
EXCERPT FROM THE PATH GUIDE SEPARATION
AND LOSS..... 41-42

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petition for rehearing a writ of certiorari to review the judgment of the Supreme Court Of Tennessee At Knoxville (Eastern Division) in this case.

ORDERS BELOW

The order of the Tennessee Supreme Court at Knoxville (Eastern Division) filed May 17, 2004.

The order of the Tennessee Supreme Court at Knoxville (Eastern Division) filed March 8, 2004.

The judgment of the Court of Appeals of Tennessee at Knoxville (Eastern Division) filed November 12, 2003.

The opinion of the Court of Appeals of Tennessee at Knoxville (Eastern Division) filed November 12, 2003.

The order of the Circuit Court of Roane County, Tennessee filed January 13, 2003.

The order of the Juvenile Court of Roane County, Tennessee filed June 14, 2002.

STATEMENT OF JURISDICTION

The Tennessee Supreme Court at Knoxville (Eastern Division) entered its order on May 17, 2004. The petitioner is invoking to the highest court for help against the injustice of The Tennessee Department of Children's Services. Adoption of my daughter when my appeals have not exhausted, would have federal legal avenues and issues before the court.

STATEMENT OF THE CASE

Linda Moore. who is my mother and paternal grandmother of Angel. and Rebecca Moore. who is my sister and paternal aunt of Angel. were granted emergency temporary custody of Angel Gaile Moore on March 2. 1998 at my request because Crystal. mother of Angel. was in jail.

On March 24. 1998. Linda and Rebecca were still awarded custody of Angel Gaile Moore at the court hearing. Brenda Isham. Maternal Great Aunt of Angel. filed an intervening petition on March 19. 1998. Since Linda and Rebecca were never summonsed with the intervening petition from Brenda Isham. Judge Austin said that no issues could be brought up because we had five days by law to get an attorney. Millie Douglas. Department of Children's Services Caseworker. was present in court when this was said and she had no involvement with Angel. Four and a half hours later. DCS worker Millie Douglas filed for an emergency custody of Angel because I hadn't established paternity. and Crystal said that Angel didn't belong to me. and that she wanted Angel to be with Brenda Isham. and then the protective custody order was granted by Judge Austin. This all happened after we left court that day and had no notice. Angel was taken from her paternal family based on DCS falsely allegations that I wasn't her biological father. even though I was listed on the birth certificate. Crystal and I have had a relationship since July 1995. There was never any allegations of abuse or neglect on the paternal family. DCS picked up a child named Angel Gaile Pressley, in which her name was never changed from Angel Gaile Moore. and was given to Brenda Isham. Maternal Great Aunt. Cindy Waldo. whom is Brenda Isham's Sister and Maternal Grandmother. was arrested for aggravated child abuse by DCS in December 1997. Cindy Waldo was convicted for aggravated child abuse for burning her 3 year old grandson with cigarettes to control him.

I paid $667.50 for a dna test on May 18. 1998 in which proved that I was Angel's biological father at 99.9%. Also on

May 18, 1998. Brenda Isham and Opal Waldo, maternal great grandmother, took Angel and her brother, Brant Pressley, and her sister, Brittany Pressley, to DCS and dropped them off because they no longer wanted them. They did this when my family proved the kids were being abused.

On November 10, 1998, Judge Humphrey recused himself from this case and ordered for another juvenile judge outside of Roane County to hear the case.

On December 16, 1998, the case was set on Meigs County docket for March 10, 1999.

On January 4, 1999, Judge Humphrey entered an order for DCS and after recusing himself and without informing my attorney of the court hearing. My attorney, Sharon Reynolds, put a motion to quash Judge Humphreys order, and it was set to be heard on January 12, 1999.

On January 12, 1999, Judge Austin took the case back against change of venue and without approval, and my attorney withdrew on January 13, 1999.

On April 17, 1999, Crystal and I got married.

On February 15, 2000 the first trial was held, and the children weren't given back to us because the plan of care wasn't finished on Crystal and I because DCS had been booked up on parenting classes until June 30, 2000. So at intervening petitioners, Linda and Rebecca, appealed their case to the Circuit Court. Then on April 11, 2000, Judge Austin suspended my and Crystal's trial stating that it would be took care of Circuit Court.

In Circuit Court was the first time an attorney or guardian ad litem was appointed. Attorney Brenda Hall asked to withdraw as guardian ad litem because she had worked with my former attorney Sharon Reynolds and discovered illicit actions. Then Jennifer Raby, former DCS worker, was appointed guardian ad litem, and Carolyn Linge was appointed our attorney.

On January 31, 2001, DCS admitted in Circuit Court trial that they failed to place Angel with a relative on the paternal family like is stated in the kinship foster care program and DCS

guidelines. Judge Simmons said that the children needs to be with their parents and subsequently sent my and Crystal's case back to Juvenile Court. Crystal and I wanted custody but in the event that we couldn't get custody, we wanted Linda and Rebecca to so that the children will be home. This was the sole reason for the appeal. Linda and Rebecca appealed their case but the Circuit Court didn't send their appeal until the parental rights termination was sent on me, and then the Court of Appeals wouldn't hear their case. As soon as the case was transferred back to Juvenile Court, DCS was already wanting to terminate our parental rights. In Juvenile Court, Crystal was appointed attorney Richard Evans, and I was appointed attorney Spence Bruner.

A custody court date was set for October 30, 2001, but according to juvenile court clerk Margaret Hutcheson to Rebecca on October 29, 2001, court wasn't going to be held because Crystal hadn't completed court orders in which Judge Austin, DCS attorney Laura Levy, and Crystal's attorney, Richard Evans, thought it would be best to postpone court during their meeting on October 29, 2001, in which my attorney Spence Bruner wasn't invited. Mr. Bruner showed up for court on October 30, 2001 thinking court was scheduled. I had complied with court orders, and DCS and Crystal hadn't complied. Also, a bonding evaluation was ordered for December 2001 for Crystal and the kids, and not for me. Crystal never showed up nor has she took her court order psychological evaluation nor has she been charged with contempt. Attorney Richard Evans withdrew as attorney for Crystal because she wouldn't come for office visits nor comply with orders.

The custody case was never rescheduled nor are there any orders pertaining to the postponement.

On November 5, 2001, Angel's fourth birthday, I called DCS supervisor Rick Miller, whom is also Angel's caseworker, and asked for Angel to call me so that I could wish her a happy birthday. Rick Miller refused the phone call in which is a court

order. Two days later, Rick Miller took out a warrant for me for assault over the phone. The bogus charge was set for $5,000. and stated that my bond would be revoked if I had any contact. Rick Miller was Angel's caseworker. I informed my attorney Spence Bruner, whom said that he couldn't get any response from DCS about visitation, etc. Before I could get the bogus charge dismissed on February 4, 2002, Rick Miller filed a petition for on January 23, 2002 to terminate my parental rights for failure to visit for four months or contact DCS. This shows a spiteful act because Rick Miller took out the warrant on me for Angel's birthday phone call on November 5, 2001, and I was to have no contact. This shows that I did have contact within four months because November 5, 2001 thru January 23, 2002 is two and a half months. Also, Rebecca called the Regional Supervisor Jerry Wilson in Clinton and begged for the kids to come in for the holidays of 2001, and he refused by saying that they are talking about terminating the parental rights. Also, Mr. Bruner was sent a confirmed faxed letter asking him to file something in court in December 2001 about DCS not responding about my visitation. To my knowledge, Mr. Bruner never filed any papers for this case while in Juvenile Court nor did he show up for depositions for my defense.

On May 28, 2002, the parental rights termination was held, and Judge Austin rendered his decision on June 14, 2002 to terminate parental rights. On November 10, 2003, the Tennessee Court of Appeals at Knoxville upheld the decision. I sent Mr. Bruner a certified letter to ask for a rehearing, and he didn't. So I hired attorney Debra Graham to take over the case. Ms. Graham filed a Rule 11 for permission to appeal to the Supreme Court of Tennessee at Knoxville, and the petition was denied for appeal. Ms. Graham filed a petition for rehearing, and the petition was still denied on May 17, 2004. Ms. Graham was to file this case to the Supreme Court of the United States and then said on August 12, 2004 that she wasn't qualified; Ms. Graham's law license was suspended last year from the Board

of Responsibility. So I had just four days to file this case for a writ of certiorari for the Supreme Court of the United States.

On January 10, 2005, the Supreme Court denied my petition for writ of certiorari.

REASON FOR GRANTING THE WRIT OF CERTIORARI

Why would Millie Douglas, Department of Children's Services caseworker, be involved in a temporary custody case that didn't involve dependency, neglect, abuse, or risk of harm?

According to the Department of Children's Services policy. dcs does not intend to intervene into family situations that do not constitute abuse. neglect. or a threat of harm to children.

Why would a child be taken from her family out of the guise of questioned paternity when there are no issues of dependency, neglect, abuse, or risk of harm?

According to the Department of Children's Services trainers guide for PATH class. children who have experienced trauma. separation. and loss will face lifelong issues different from those faced by children who have not encountered such hardships: Children who experience early separation and loss will struggle throughout their lives with issues involving trust. self-esteem. and development of relationships.

Why didn't the Department of Children's Services do a dna test before taking Angel from her family since I was listed on the birth certificate and signed a voluntary acknowledgement?

The Department of Children's Services does monthly dna testing. DCS took custody from Linda and I. not Linda and Rebecca.

Why didn't the trial court cite the court appointed attorney Spence Bruner for contempt for his actions?

When Mr. Bruner failed to show for court hearings and depositions. Mr. Bruner never filed anything with the court on my behalf. When I appealed to the Court of Appeals at Knoxville, the court had to make him respond since he was the trial court attorney.

Why does the trial court think it is in the best interest of the child for my parental rights to be terminated?

Taking a child from their family without any abuse, neglect, dependency, or risk of harm issues is never in the best interest of a child. My family and I have fought since March 24, 1998 to get Angel home as well as her siblings so that our family could be united as is right and just. The harder we fought, the harder DCS fought back. Angel was bonded with her family, and she was taken out of my arms saying that I wasn't her father.

My diagnosis of major depression is justifiable because I, as a parent, endured the loss of a child. DCS wouldn't even place her with any paternal relatives because they said we had no rights. If Angel was placed with a relative, the parental rights termination wouldn't have took place. I paid child support until the child support office sent me a letter stating not to pay because there was no order for me to pay. I acknowledged every visit and holidays with gifts (clothing, shoes, toys, money). The psychologist stated that my depression would be remedied in the near future with help. The foster parents have been investigated for child abuse and their two adopted sons whom they adopted at a young age, had been placed in juvenile detention centers and ran away. Angel will never know her other siblings or family heritage; According to the PATH (Parents As Tender Healers) Tennessee's curriculum for foster.

adoptive. and kinship care parents trainer's guide. Angel will develop survival behaviors and emotional issues and separation and loss issues. Angel is always going to think that I gave her away. but I didn't.

Why wasn't the law of doctrine of judicial estoppel applied?

Judicial estoppel should have been applied from saying that I wasn't Angel's father since in prior litigation said I was. In the emergency temporary custody of Angel was given to my mother and Angel's grandmother. and my sister and Angel's paternal aunt on March 2. 1998. At the court hearing on March 24. 1998. temporary custody was still left with my mother and sister.

Why hasn't Linda and Rebecca Moore's custody been abolished?

Linda and Rebecca Moore had custody of Angel Gaile Moore: The Department of Children's Services and a court order picked up a child named Angel Gaile Pressley. There custody was never abolished because Angel's name was never legally changed. As intervening petitioners, the court never recognizes Rebecca Moore for custody.

Why would Angel's story be listed in the Tennessee Federal lawsuit to reform state child welfare system?

Her story was used to seek reform of the Tennessee Department of Children's Services that are putting thousands of children under the care of DCS in danger and at risk of harm.

Why would Angel be adopted by a foster family when my rights are still being contested in court proceedings?

I found out on January 24, 2005 that my daughter's birth certificate records have been sealed due to an adoption, and that her insurance has changed her last name to Foster.

Why would The Department of Children's Services not mention that my daughter was adopted and her birth last name has been changed?

Mentioning this to the court would show the injustice invoked and my due process rights of me and my daughter has been violated.

How could The Department of Children's Services adopt my daughter when all of my appeals have not exhausted in court?

Adopting my daughter before my appeals exhaust shows violation of due process rights for me and my daughter.

CONCLUSION

I am respectfully praying for the Honorable Supreme Court of the United States to grant the rehearing petition for writ of certiorari as my last chance of bringing my Angel home to her family. whom has made diligent efforts daily since March 24. 1998. There has been many rights violated against me and my daughter in an effort to reunite my family. Adopting my daughter before all of my appeals have exhausted will open legal avenues. The adoption shall be voided. There is a federal case pending against the injustice of Tennessee Department of Children's Services and my family that stems from my daughter. Angel. All that I have ever wanted is the reunification of my family as is right and just. I have the fundamental right to raise my daughter. My rights were taken from me when my daughter was kidnapped from me out of the guise of questioned paternity. not from dependent or neglect issues. from the Tennessee Department of Children's Services.

Respectfully Submitted.

Ralph Dewayne Moore
c/o PO Box 928
Harriman, TN 37748
Phone No. 865-882-8398
February 2, 2005
Petitioner

TABLE OF APPENDICES

APPENDIX A
TENNESSEE SUPREME COURT
DECISION MAY 17, 2004.....15

APPENDIX B
TENNESSEE SUPREME COURT
DECISION MARCH 8, 2004.....16

APPENDIX C
COURT OF APPEALS OF
TENNESSEE AT KNOXVILLE
JUDGMENT NOVEMBER 12, 2003.....17

APPENDIX D
COURT OF APPEALS OF
TENNESSEE AT KNOXVILLE
OPINION NOVEMBER 12, 2003.....18-22

APPENDIX E
CIRCUIT COURT OF ROANE COUNTY,
TENNESSEE JANUARY 13, 2003.....23-25

APPENDIX F
JUVENILE COURT OF ROANE COUNTY,
TENNESSEE JUNE 14, 2002.....26-32

APPENDIX G
U.S. DISTRICT COURT JUDGE TODD
CAMPBELL ORDER MAY 26, 2000
COURTESY OF CHILDREN'S RIGHTS.....33-36

APPENDIX H
EXCERPT FROM THE PARENTS AS TENDER HEALERS (PATH) GUIDE-A CURRICULUM FOR FOSTER. ADOPTIVE. AND KINSHIP CARE PARENTS-PARTICIPANT'S HANDBOOK BY ROSEMARY P. JACKSON. MSW. ACSW. PROGRAM MANAGER AND KARAL WASSERMAN. MSW. SENIOR TRAINER/CONSULTANT. CONTRIBUTORS DRENDA S. LAKIN. MSW. ACSW. AND TRACY CHARLEY. MA. TRAINING AND RESOURCE CENTER/SPAULDING FOR CHILDREN SELECTED CURRICULUM OF THE TENNESSEE DEPARTMENT OF CHILDREN'S SERVICES REASONS FOR SURVIVAL BEHAVIORS.....37-38

APPENDIX I
EXCERPT FROM THE PARENTS AS TENDER HEALERS (PATH) GUIDE-A CURRICULUM FOR FOSTER. ADOPTIVE. AND KINSHIP CARE PARENTS-PARTICIPANT'S HANDBOOK BY ROSEMARY P. JACKSON. MSW. ACSW. PROGRAM MANAGER AND KARAL WASSERMAN. MSW. SENIOR TRAINER/CONSULTANT. CONTRIBUTORS DRENDA S. LAKIN. MSW. ACSW. AND TRACY CHARLEY. MA. TRAINING AND RESOURCE CENTER/SPAULDING FOR CHILDREN SELECTED CURRICULUM OF THE TENNESSEE DEPARTMENT OF CHILDREN'S SERVICES KEY DEFINITIONS.....39-40

APPENDIX J
EXCERPT FROM THE PARENTS AS TENDER HEALERS (PATH) GUIDE-A CURRICULUM FOR FOSTER. ADOPTIVE, AND KINSHIP CARE PARENTS-PARTICIPANT'S HANDBOOK BY ROSEMARY P. JACKSON, MSW, ACSW, PROGRAM MANAGER AND KARAL WASSERMAN. MSW, SENIOR TRAINER/CONSULTANT. CONTRIBUTORS DRENDA S.

LAKIN. MSW. ACSW. AND TRACY CHARLEY. MA.
TRAINING AND RESOURCE CENTER/SPAULDING FOR
CHILDREN SELECTED CURRICULUM OF THE
TENNESSEE DEPARTMENT OF CHILDREN'S SERVICES
SEPARATION AND LOSS.....41-42

APPENDIX A

[FILED MAY 17, 2004]

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

RDM v. STATE OF TENNESSEE, DEPARTMENT OF CHILDREN'S SERVICES

No. E2003-00330-SC-R11-PT

ORDER

Upon consideration of the Petition for Rehearing the original application for permission to appeal, which application for permission to appeal was denied by order entered March 8, 2004, and the record before us, the Petition is denied.

PER CURIAM

APPENDIX B

[FILED MARCH 08. 2004]

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

RDM v. STATE OF TENNESSEE, DEPARTMENT OF CHILDREN'S SERVICES

No. E2003-00330-SC-R11-PT

ORDER

Upon consideration of RDM's application for permission to appeal and the record before us. the application is denied.

PER CURIAM

APPENDIX C

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

{FILED NOVEMBER 12, 2003}

RDM v. STATE OF TENNESSEE, DEPARTMENT OF CHILDREN'S SERVICES, IN THE MATTER OF: AGM.
A Child Under Eighteen Years of Age

Circuit Court for Roane County
No. 12079

No. E2003-00330-COA-R3-CV

JUDGMENT

This cause was regularly heard and considered by the court. IT IS NOW ORDERED that the judgment of the Trial Court is affirmed, and the cause remanded. The costs of appeal are adjudged to the father, RDM, for which execution may issue if necessary.

PER CURIAM

APPENDIX D

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

October 17. 2003 Session

{Filed November 12. 2003}

RDM v. STATE OF TENNESSEE, DEPARTMENT OF CHILDREN'S SERVICES, IN THE MATTER OF: AGM, A Child Under Eighteen Years of Age

Direct Appeal from the Circuit Court for Roane County No. 12079 Hon. Russell Simmons, Jr., Circuit Judge

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No. E2003-00330-COA-R3-CV

The Trial Court terminated parents' parental rights. The father has appealed. We affirm the Trial Court.

Tenn. R. App. P.3 Appeal as of Right; Judgment of the Circuit Court Affirmed.

HERSCHEL PICKENS FRANKS. J. delivered the opinion of the court. in which CHARLES D. SUSANO, JR., J., and D. MICHAEL SWINEY, J., joined.

Spence R. Bruner, Kingston. Tennessee, for Appellant.

Paul G. Summers, Attorney General and Reporter, and Juan G. Villasenor, Assistant Attorney General, Nashville. Tennessee. for Appellee.

OPINION

The Trial Court severed the parental rights of the parents to AGM at the behest of the Department of Children's Services ("DCS"). The biological father. RDM. has appealed.[1]

BACKGROUND

This case originated with a Petition for Temporary Custody filed by DCS regarding a minor child. AGM. against her parents. At the time the mother was incarcerated. and there was no one left to take care of the child. A Protective Custody Order was enter on March 24. 1998 granting custody of the child to DCS. due to the emergency situation. By Order dated October 19. 1998. RDM was determined to be the father (since the mother was married to someone else at the time the child was born). He was granted 4 hours visitation per month at the DCS office pending further hearing. However. a few months later. the visitation was changed to supervised visitation and a proviso was added that if there were "any further problems" or if either parent was arrested. the visitation would be suspended.

The paternal grandmother filed a series of petitions seeking custody of the child. all without success.

THE TRIAL

In January 2002. DCS filed a Petition to Terminate Parental Rights, setting forth numerous grounds for termination, and that termination would be in the child's best interest. Numerous witnesses testified, and the Court found that although neither parent testified. the mother had advised

1 The mother did not perfect an appeal.

the Court at a hearing in February that she had resumed living

with the father, despite injuries he inflicted upon her in August 2001. The Court found that both parents had willfully failed to visit the child, that the child had been removed for more than six months, the conditions leading to removal still persisted, and the father was incompetent to care for the child based upon his mental condition. The Court found that both parents had failed to comply with the Plan of Care, and that returning the child to the parents would pose a risk of substantial harm. Further, the Court held that it was in the child's best interest to terminate parental rights. The evidence does not preponderate against the Trial Court's factual determination. Tenn. R. App. 13 (d).

DISCUSSION

The father raises on appeal whether there was clear and convincing evidence to support the grounds for termination, and whether termination was in the child's best interests?

A parent has a fundamental right to the care, custody, and control of his child. *Stanley v. Illinois*, 405 U.S. 645, 92 S. Ct. 1208 (1972). Such right is not absolute and may be terminated if there is clear and convincing evidence to justify such termination under the applicable statute, and additionally, the court must find that termination is in the child's best interest. *Santosky v. Kramer*, *455* U.S. *745*, *102* S. Ct. *1388 (1982)*; *Tennessee Dept. of Human Services v. Riley*, 689 S.W. 2d 164 (Tenn. Ct. App. 1984); Tenn. Code Ann. & 36-1-113(c).

Termination of parental rights is appropriate if the record contains clear and convincing evidence to support any of the bases found by the trial court for termination. *See: In re C.W.W.*, *37* S.W.3d 467 (Tenn. Ct. App. 2000), and *O'Daniel v. Messier*, 905 S.W.2d 182 (Tenn. Ct. App. 1995).

In this case, the Trial Court terminated the parental rights based upon the following statutory grounds:

1. abandonment:

2. failure to substantially comply with the plan of care: and

3. that the child had been removed for more than six months, and the conditions requiring removal still persisted and would not likely be remedied in the near future.

Additionally, the Court found that there was clear and convincing evidence that terminating the father's parental rights was in the child's best interest.

The proof was undisputed that the father had not visited the child since September 2001, and the Petition to Terminate was filed in January 2002. Undisputed proof also showed that the father could have scheduled visitation with the child, but failed to do so, and he had never paid any child support, although he received disability benefits.

Moreover, the evidence shows that DCS had attempted to assist the father to make a suitable home for the child, but instead he persisted in a course of violent behavior toward the mother and others, of alcoholism, and of suicidal behavior. The Court also found, and the proof was undisputed that the father signed off on the plan of care and was made aware of its requirements, but he failed to comply with the parenting plan. The evidence plainly supports the Court's finding on this issue.

Finally, the Trial Court found the child had been removed for more than six months, and that the conditions

which led to the removal persisted. and were unlikely to be remedied in the near future. The evidence in this regard established the father had taken no steps to remedy or change his situation in any meaningful way. The Court was presented with proof that the foster family was well bonded to the child. and would be willing to adopt her. Failing to terminate would leave the child in the same state that she had been in for the last four years. with no real hope of improvement. Clearly it was in the child's best interests to terminate the parental rights of the father so that the child could be integrated into a safe. stable. and permanent home.

We affirm the Judgment of the Trial Court and remand. with the cost of the appeal assessed to the father. RDM.

"s/_____"
HERSCHEL PICKENS FRANKS. J.

APPENDIX E

IN THE CIRCUIT COURT FOR ROANE COUNTY, TENNESSEE

RALPH DEWAYNEN MOORE,
AKA WAYNE MOORE

APPELLANT

vs. { No. 12079

DEPARTMENT OF CHILDREN'S SERVICES
STATE OF TENNESSEE

IN THE MATTER OF:
ANGEL GAILE MOORE, B.D. 11-5-97
A Child Under Eighteen (18) Years of Age

ORDER

This cause came to be further heard before the Honorable Russell Simmons, Judge of the Circuit Court of Roane County, Tennessee, upon the Court's own motion to vacate or set aside the prior order of the Court dismissing the appeal of Ralph DeWayne Moore filed in this Court in error. This Court finds

pursuant to T.C.A. 16-4-108 (2) and **In Re Estate of White. 77 S.W. 3d 765 (Tenn. Ct. App.. 2001)** that the appeal should be transferred directly by this Court to the correct court. the Tennessee Court of Appeals. Eastern Section. It is the opinion of the Court that it is in the best interest of the child. Angel Gaile Moore. and the public as follows. and

IT IS THEREFORE. ORDERED. ADJUDGED. AND DECREED:

1. This case will be transferred directly from this Court to the Tennessee Court of Appeals. Eastern Section. which has jurisdiction of the appeals of termination of parental rights cases from the Juvenile Court of Roane County.

ENTER this the 13 day of January, 2003.

"s/_____"
JUDGE RUSSELL SIMMONS

PREPARED FOR ENTRY:

"s/_____"
Laura S. Levy. B.P.R. 6004
Area General Counsel
Department of Children's Services

CERTIFICATE OF SERVICE

I hereby certify that I have this day deposited in the U.S. Mail a copy of the foregoing Order addressed toRalph DeWayne Moore. PO Box 928. Harriman. TN 37748: and to Jennifer Raby. Attorney at Law. Guardian ad litem. and to Spence Bruner. with sufficient postage thereon to carry same to their destinations.

This the 13 day of January. 2003.

"s/_____"

Laura S. Levy
Area General Counsel
Department of Children's Services

APPENDIX F

(Filed June 14. 2002)

IN THE JUVENILE COURT OF ROANE COUNTY. TENNESSEE

STATE OF TENNESSEE
DEPARTMENT OF CHILDREN'S SERVICES

PETITIONER

vs. | No. 9535, 5591. 7707

CRYSTAL MOORE
AND

RESPONDENTS

IN THE MATTER OF:
ANGEL GAILE MOORE, B.D. 11-5-97
BRANT PRESSLEY, B.D. 7-23-94
BRITTANY PRESSLEY, B.D. 11-23-92

CHILDREN Under Eighteen Years of Age

TERMINATION OF PARENTAL RIGHTS
AND
FINAL DECREE OF PARTIAL GUARDIANSHIP

And thereupon. this cause came to be further heard on the 28th day of May. 2002. before the Honorable Thomas Austin of

the Juvenile Court of Roane County, Tennessee, upon the sworn petition of the State of Tennessee, Department of Children's Services, with all parties properly before the Court on service of process: including the mother Crystal Moore, the father Ralph Dwayne Moore with counsel Spence Bruner, the guardian ad litem Jennifer Raby and Richard Miller with counsel Laura Levy for the Department; proof introduced at the hearing and the entire record from all of which the Court finds by clear and convincing evidence:

That Crystal Moore is the mother of all three children, Angel Gaile More, Brant Pressley, and Brittany Pressley. Respondent Ralph Dwayne Moore is the father of Angel Gaile Moore only. The parental rights of Scott Pressley to the two children Brant and Brittany Pressley will be the subject of a separate hearing. There are no other persons entitled to notice of these proceedings. The paternal grandmother Linda Moore and paternal aunt Rebecca Moore had filed a petition to intervene for custody of their grandchild/niece Angel Moore, and this petition was denied by this court, and then denied again by the Honorable Russell Simmons, Judge of the Circuit Court of Roane County, Tennessee, on an appeal from this Court, so that they are no longer a party.

The proof included the following:

- Testimony from Richard Miller, the Supervisor of the Roane County office of the Department for over fifteen Years.

- Testimony from the child protective services (CPS) investigator Millie Douglas who handled the removal of the children to foster care over four years ago,

- Testimony from Charles Ely, the State of Tennessee Probation Officer for both parents

- Testimony of Louise Dice, representative of CASA

- Deposition for proof from Dr. Bernard Lyons, a licensed psychologist who examined the father, the paternal grandmother, and the children

- Psychological records of the father from Peninsula Hospital and Dr. Albiston, licensed psychologist

- Pictures of Crystal Moore showing the most recent domestic violence she has suffered from her husband Ralph Dwayne Moore on August 12, 2001.

- No testimony from either parent. The court finds that at the hearing prior to this hearing on February 19, 2002, the mother advised the Court that she had resumed living with her husband Ralph Dwayne Moore in spite of the injuries she had received from him in August 2001. Her counsel Richard Evans was allowed to withdraw at that time, and the Court advised the mother that another attorney would not be appointed for her as she had failed to cooperate with Mr. Evans.

That Respondents Ralph Dwayne Moore and Crystal Moore have both abandoned these children in that Respondents have willfully failed to visit or to engage in more than token visitation for four (4) consecutive months immediately preceding the filing of this petition. Specifically, Crystal Moore last visited her three children on October 5, 2001. Ralph Dwayne Moore last visited his child Angel Moore on September 28, 2001, and the petition to terminate was filed on January 23, 2002. All three children had been in foster care for over four years most of that time in the same foster home together.

That the children have been removed by order of this Court for a period of six (6) months: the conditions which led to their

removal still persist: other conditions persist which in all probability would cause the children to be subjected to further abuse and neglect and which, therefore, prevent the children's return to the care of Respondents: there is little likelihood that these conditions will be remedied at an early date so that these children can be returned to either of them in the near future; the continuation of the legal parent and child relationship greatly diminishes the children's chances of early integration into a stable and permanent home:

That Respondent Ralph Dwayne Moore is incompetent to adequately provide for the further care and supervision of his child Angel Moore because the parent's or guardian's mental condition is presently so impaired and is so likely to remain so that it is unlikely that he will be able to assume the care of and responsibility for the child in the near future: The Court has reviewed the findings and recommendations of the reports submitted from both Dr. Albiston and Dr. Lyons, and the Court finds that the father is unable to care for the child at this time. The father resides with his mother, Linda Moore, and she submitted to a psychological examination by Dr. Bernard Lyons, and Dr. Lyons made findings that she was not able to care for the child either.

That Respondents have both failed to comply in a substantial manner with those reasonable responsibilities set out in the foster care plan related to remedying the conditions which necessitate foster care placement. Specifically the plan required the parents to undergo parenting classes and for, anger management classes. Two years ago, the parents attended counseling for a period of months with Gretchan Foster, L.C.S.W., and she made recommendations that the family was stable enough for the children to return. Though Gretchan Foster, L.C.S.W., recommended return of the children, the father continued to exhibit violent behaviors which included the father suffering a self-inflicted gunshot wound to the head and the mother again left her husband due to domestic violence. The Department began allowing some unsupervised visits. The

Department also allowed the mother to have unsupervised weekend visits with a plan to return the children. When the mother returned to the father, the Department terminated unsupervised visits. The parents were told to resume counseling, with Ms. Foster and they failed to return. The parents have moved numerous times without notice to the Department and have failed to stay in touch with their caseworker. Ralph Dwayne Moore has threatened several employees of the Department and the court staff. His probation officer has recommended that the father's community corrections be revoked and that the father be sent to prison.

That Respondents have failed to manifest an ability and willingness to assume legal and physical custody of the children:

That awarding legal and physical custody of the children to Respondents, would pose a risk of substantial harm to the physical or psychological welfare of the children:

That it is in the best interest of Angel Moore, Brittany Pressley, and Brant Pressley and the public that all of Respondents' Ralph Dwayne Moore and Crystal Moore's parental rights to these children be terminated and the complete custody, control, and guardianship of the three children be awarded to the State of Tennessee, Department of Children's Services, with the right to place them for adoption and to consent to such adoption in loco parentis.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED:

1. That all of the parental rights which Respondents, Ralph Dwayne Moore and Crystal Moore have to Angel Moore, Brant Pressley, and Brittany Pressley are hereby forever terminated.

2. That this decree shall have the effect of terminating all the rights, responsibilities, and obligations of Respondents to these children and of the children to Respondents arising from

the parental relationship.

3. That Respondents shall have no further right to notice of proceedings for the adoption of these children. shall have no right to object to the children's adoption. and shall have no relationship. legal or otherwise. with the children.

4. That the complete custody. control and full guardianship of Angel Gaile Moore is hereby awarded to the State of Tennessee. Department of Children's Services. with the right to place her for adoption and to consent to such adoption in loco parentis.

5. That the complete custody. control and partial guardianship of Brittany Pressley and Brant Pressley is hereby awarded to the State of Tennessee. Department of Children's Services. with the right to place them for adoption and to consent to such adoption in loco parentis subject to any parental rights of the legal father Scott Pressley which will be the subject of a separate hearing.

6. That Guardian ad Litem Jennifer Raby and the counsel Spence Bruner are both awarded a fee taxed to the State of Tennessee. on the state form upon a finding that Respondents are indigent.

ENTER this the 14 day of June. 2002.

"s/_____"
JUDGE THOMAS A AUSTIN

PREPARED FOR ENTRY:

"s _____"
Laura S. Levy. B.P.R. 6004
Area Legal Counsel
Department of Children's Services
182 Frank L. Diggs Dr.
Suite 100
Clinton. TN

"s/_____"
Jennifer Raby. Guardian ad litem
"s _____"
Spence Bruner. Counsel for Dwayne Moore

I hereby certify I have sent a copy by certified mail to Crystal Moore. by U.S. Mail. with sufficient postage. this the 14th day of June 2002.

"s/_____"
Patricia D. Murphy B.P.R. 0011079

APPENDIX G

October 27, 2000

TENNESSEE JUDGE RULES FEDERAL LAWSUIT TO REFORM STATE CHILD WELFARE SYSTEM SHOULD MOVE FORWARD; RE-ASSERTS CHILDREN'S FEDERAL RIGHTS TO CARE AND PROTECTION

Judge denies state move to dismiss lawsuit, saying claims are supported by law.

(Nashville, Tennessee, October 27) - U.S. District Court Judge Todd Campbell ruled on October 26 that the class action Brian A. v. Sundquist seeking to reform Tennessee's child welfare system should move forward. In denying the state's motion to dismiss the federal civil rights lawsuit, Judge Campbell's decision in the U.S. District Court for the Middle District of Tennessee at Nashville firmly held that children have constitutional and statutory rights to adequate care and protection from a state child welfare agency. Brian A. v. Sundquist seeks reform of the Tennessee Department of Children's Services (DCS) and charges that the defendants in the case, Governor Don Sundquist and DCS Commissioner George Hattaway, are putting thousands of children under the care of DCS in danger and at risk of harm.

"Judge Campbell's decision puts Tennessee in the forefront of establishing the federal rights of children," stated Marchia Robinson Lowry, executive director of Children's Rights, a national children's advocacy group representing plaintiffs in Brian A.. "Most courts have not yet recognized with this degree of clarity, what those rights are and why they are enforceable. This decision is the tool we need to protect the children of Tennessee and should give hope to children and

advocates in other states across the country."

Children's Rights and local Tennessee lawyers representing the eight named children plaintiffs and all children in Tennessee's foster care system had opposed the state's motion to dismiss the entire case. The children's lawyers argued that "Tennessee's foster care system is in a state of chaos and emergency" and that "for too many children, a safe return to their family, adoption or other permanent placement is only a fantasy, not a reality. Instead, far too many Tennessee children are growing up in state custody."

David Raybin, local counsel for the children, hailed the decision as critical in reforming the Tennessee child welfare system. "This is an important step forward for Tennessee's foster children." Mr. Raybin said.

The state had asked Judge Campbell to dismiss every single legal claim in the case. Lawyers for the children responded that "Invoking a 'shotgun' approach, defendants have moved to dismiss every claim asserted by plaintiffs, in an attempt to deny any legal responsibility for the systemic failings which have caused-and continue to cause-plaintiffs to suffer significant physical, emotional and psychological harm." Quoting a federal appeals court case, Judge Campbell's decision held that the children's constitutional claims present "the exact sort of dispute over citizens' rights with which the federal courts were created to deal."

About Brian A. v. Sundquist

Brian A. v. Sundquist was filed on May 10, 2000 on behalf of eight named plaintiffs- children who have suffered serious physical and psychological harm while in the care of DCS-and on behalf of the approximately 10,000 foster care children who are currently dependent on DCS for their care and protection.

Defendants in the class action are Governor Donald Sundquist and George Hattaway, Commissioner of DCS.

The lawsuit was filed by Children's Rights, a national advocacy group for children, along with co-counsel David L. Raybin and Jacqueline B. Dixon of Hollins, Wagster, & Yarbrough PC in Nashville, and Richard B. Fields in Memphis, John W. Pierotti and Robert Louis Hutton of Glankler Brown PLLC in Memphis, and Wade V. Davies of Ritchie Fels & Dillard in Knxoville.

Brian A. v. Sundquist asserts that for at least ten years the state has been well aware of its pervasive failure to serve the children who depend on DCS for their basic safety and most fundamental needs, and has failed to provide the leadership, support and resources necessary to protect and care for children.

The lawsuit requests that the court permanently stop defendants from subjecting the children in the plaintiff class to harm and from threatening their safety and well-being through practices that violate their rights. On behalf of these children, the court is being asked to order appropriate remedial relief to ensure that defendants comply with the law and provide children with legally mandated services.

In August 2000, Magistrate Judge Joe B. Brown, U.S. District Court for Middle District of Tennessee had rejected an attempt by defendants - Governor Don Sundquist and DCS Commissioner George Hathaway - to block initial fact gathering in Brian A. v. Sundquist.

Children's Rights works throughout the United States in partnership with national and local experts, advocates and government officials to document the needs of children in the care of child welfare systems. Children's Rights helps develop realistic solutions and, where necessary, uses the power of

litigation to ensure that reform takes place.

APPENDIX H

Reasons for Survival Behaviors

Here are some survival behaviors and some of the emotional issues that cause them.

Survival Behavior	Underlying Emotional Issue
Aggressiveness	* Fear of becoming attached I'll hurt you before you can hurt me.
Testing and control Battles	* Need for control I feel like my life is out of control: so, I'll try to control you! (everything).
Identity issues	* Poor sense of self-esteem Because of my abuse/neglect. many moves, or believing I was given away, I feel like a nobody.
Anger/depression	* Underlying tension that can't be identified or described in words. I'm afraid to get to close to you. You may hurt me, too.
Values issues lying and stealing	* Conflict in values What I learned from my birth family and through the system is very different from your family. If I tell the truth, I may be hurt. I've got to take what I need in order to take care of myself.

Separation anxiety	* Emotional or developmental delays You will leave me - just like everyone else has.
Over-competency	*Need for control I don't trust that you can take care of me: so, I'll have to do it myself.
Inappropriate sexual behavior	* Sexual abuse victim or witness This is the only way I know to get close.
Withdrawal from relationships	* Fear of becoming attached or hurt I won't relate to you, and that way I won't have to care about you.
Hoarding	* Fear of being out of control I think of the world as scarce, and I need to make sure my needs will be met.

Adapted from Jackson, R., and Wasserman, K., **Michigan Post Adoption Services System Curriculum.** Southfield, MI: Spaulding for Children, 1994.

APPENDIX I

Key Definitions

Child Neglect — Harm to a child's health or welfare by a parent, legal guardian or person who has custodial care of the child. The harm may occur through either of the following:

(a) Negligent treatment, including the failure to provide adequate food, clothing, shelter or medical care.

(b) Placing a child at an unreasonable risk to his/her health or welfare by failure of the parent, legal guardian person who has custodial care of the child to intervene to eliminate that risk when that adult is able to do so and has knowledge of the risk.

Child Abuse — Harm or threatened harm to a child's health or welfare that occurs through nonaccidental physical or mental injury, sexual abuse, sexual exploitation or maltreatment.

Sexual Abuse — Any act occurring between people who are at different developmental stages that is performed for the sexual gratification of the person in the more advanced or more powerful position. Examples of sexual abuse include fondling, touching children in inappropriate ways, verbal remarks that are sexual in nature and that make the child uncomfortable, various types of sexual behavior, exploitation, exposure and unwanted physical contact.

Lakin. Drenda. **Making the Commitment to Adoption,** Southfield. MI: Spaulding for Children. 1995.

McNamara. Joan and Bernard. **Adoption and the Sexually Abused Child,** Portland. ME: University of Southern Maine. 1990.

State of Michigan. **Child Protection Law,** Lansing. MI: Department of Social Services. 1989.

APPENDIX J

Separation and Loss

Separation and loss are universal human experiences.

As we grow up, all of us learn ways of handling our feelings about being temporarily separated from those who are important to us and about losing such people permanently.

Losses are always painful - both because of their immediate impact and because they stir up feelings and memories of earlier losses.

When we suffer a loss, we grieve. The feelings of grief are strong, painful and hard to sort out. Although they never come out at a time or in perfect order, generally one feeling is strongest at a particular moment; and we do go through the feelings in stages.

The grief process includes the following five feelings:

Denial - We don't want to believe the loss. We can't endure the pain. We pretend that it isn't true or that it doesn't really matter to us. Sometimes we use excessive activity to defend against the pain, or we may withdraw and sleep a lot.

Guilt - Surely there was something that we did that caused the loss or something that we could have done to prevent it. Children always feel that they are responsible for a loss that they experience.

Anger - Why did this happen to me? It isn't fair! Somebody will pay for my pain! Sometimes the fear that our anger will hurt someone causes us to block its

expression and to turn it inward. The result is depression.

Sadness - With the realization that the loss occurred and that it cannot be undone, there is an intense awareness of how much the lost person is missed - particularly at moments that had been shared and treasured (mealtimes, bedtimes, holidays, etc.).

Acceptance - Total acceptance is difficult to achieve. Often the grief process starts again, or we go back to one of the earlier stages that gave us trouble. Each new loss, of course, generates a new round of feelings.

The only way out of the pain of a loss is to go through the grief process. Because we do not like to see children hurting, we sometimes join them at the denial stage and fail to give them the chance to learn how to cope with the pain of loss. We tell children "not to worry about the past" or that "everything is going to be all right now," rather than quietly accepting their pain - and by our sharing, easing it a little for them.

Adapted from Watson, Kenneth, **Separation and Loss.** October 1982.